



# Focus

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## Columbia River Water Allocation Reviewed

### Two-Phased Rule Proposal

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The Washington State Department of Ecology is considering using a two-phased rule development process to address instream flows for the Columbia River. The first phase would amend the present management program for the river by adopting language stating that the existing rules apply only to existing conditioned water right permits and certificates and not to future permits or certificates. The flow protection measures in the current rules were adopted in the early 1980s and are now obsolete and inadequate.

The second phase of rule-making would involve adoption of new flow protection measures and/or a specific process for identifying such measures on a case-by-case basis. Until then, Ecology would rely on coordination with the Washington State Department of Fish and Wildlife in accordance with existing law to determine the appropriate conditions to include on any permits which Ecology might need to issue in the interim.

### Public Involvement

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Public involvement will include public scoping workshops and formal hearings on the rule proposal. Dates and places for the scoping workshops on the first phase rules are as follows:

**WENATCHEE**--July 14--7:00-9:00 PM--Red Lion (Doubletree Hotel) 1225 N. Wenatchee Ave.

**MOSES LAKE**--July 15--7:00-9:00 PM--Best Western Hallmark Inn, 3000 W. Marina Drive

**KENNEWICK**--July 16--7:00-9:00 PM--Mid-Columbia Library, 4055 S. Dayton

**BELLEVUE**--July 21--7:00-9:00 PM--Ecology's Northwest Regional Office, 3190 160th Ave. S.E.

**SPOKANE**--July 22--7:00-9:00 PM--Ecology's Eastern Regional Office, 4601 Monroe Street

Proposed rules may be published as early as August 1997. Oral and written comments on the proposed rules will be sought during August and September 1997.

### Background

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Early in 1992, Ecology established moratoria on new water appropriations from the Columbia and Snake rivers. The moratoria were initially adopted by emergency rule in response to National Marine Fisheries Service's decision to list three Snake River salmon stocks as endangered or threatened under the federal Endangered Species Act.

Adequate stream flow for salmon migration is one of the key issues associated with the salmon's decline, although what these flows specifically should be is a subject of continuing debate. Ecology is the state agency responsible for approving diversions of water from rivers and streams in the state. Consequently, the National Marine Fisheries

Service, the Northwest Power Planning Council and the Washington State Department of Fisheries requested Ecology to curtail approval of new water diversions until uncertainty about how much water flow the fish need is resolved.

Ecology re-adopted the rules in late 1992 and again in 1994. The agency anticipated resolution of the uncertainty regarding flows would result from the many studies which have focused on the question of adequate flows for salmon migration. Unfortunately, scientific consensus on adequate flows for fish still does not appear to be imminent.

The moratorium was scheduled to expire on July 1, 1999 or when Ecology established an instream resources management program for the river, whichever occurred first. However, the 1997 Legislature passed a law eliminating the moratorium on new diversions from the Columbia River (but not the Snake River). This law will take effect on July 27, 1997.

About 100 water right applications have been received since 1992 and remain pending before Ecology. When Governor Locke signed the bill into law, he stated that no water withdrawals will be allowed until instream flows and water allocation rules have been updated for the Columbia River. The Governor also directed Ecology to immediately initiate this rule amendment process. When rule making has been completed, Ecology will take action on the pending applications.

### **Fish Concerns**

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In addition to the salmon stocks already listed as endangered under the federal Endangered Species Act, Columbia River steelhead, chum salmon and bull trout are being considered for listing. It is illegal under federal law to harm a member of a species that has been listed as endangered.

If Ecology were to take an action which could reduce flows for listed salmon, such as allowing new diversions from a river where the salmon migrate, it might be considered to be harming the species. The National Marine Fisheries Service could then use its authority under the Endangered Species Act to impose constraints on Ecology's ability to manage water appropriations from the river in question.

Under existing law, Ecology is required to give notice to the state Department of Fish and Wildlife regarding applications to divert or store water. Ecology may refuse to issue a permit or may condition it if Fish and Wildlife believes that issuing it would result in lowering the flow of water *below* the flow necessary to support fish populations in the stream. Ecology could rely on this process with Fish and Wildlife to help ensure there is adequate instream flow protection for salmon in the Columbia River until the second phase of the rule amendments is adopted.

### **For More Information**

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Thom Lufkin -- (360) 407-6631, Department of Ecology, SHWR Program, PO Box 47600, Olympia, WA 98504-7600

For information regarding the status of Columbia Basin fish stocks contact Dr. Hal Beecher of the State Department of Fish and Wildlife, P.O. Box 43135, Olympia, WA 98504-3134, telephone (360) 902-2421.

*If you have special accommodation needs or require this document in alternative format, please contact Felicia Curtis at (360) 407-6199 (Voice) or (360) 407-6006 (TDD).*